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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 27

THE FIRST NATIONAL CITY BANK OF NEW YORK,
Petitioner,

v.

WHITNEY GRISWOLD, PEARL CARTER PACE and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and ROBERT B. ANDERSON, as Secretary of the Treasury of the United States of America,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, The First National City Bank of New York, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled case on June 12, 1958, which affirmed the judgment of the District Court for the District of Columbia.

Opinions Below

The opinion of the Court of Appeals is not yet officially reported but is printed in the record (R. 164-171), and also as Appendix A to this petition.

The opinion of the District Court is not officially reported but is printed in the record (R. 152-4).

Jurisdiction

The judgment of the Court of Appeals, printed as Appendix B to this petition, was entered on June 12, 1958 (R. 172). The jurisdiction of this Court is invoked under 28 USC § 1254(1).

The District Court had jurisdiction of the action under 28 USC § § 1331, 2201, and 5 USC § 1009.

Questions Presented

The questions presented are as follows:

1. Where the Foreign Claims Settlement Commission has erroneously interpreted the jurisdiction conferred upon it by Congress and has refused to consider petitioner's claim on the merits solely by reason of that misinterpretation, and has thus deprived petitioner of its constitutional right to due process under the Fifth Amendment: — does not the United States District Court have the power and the duty to intervene to declare the true jurisdiction of the Commission and to direct the Commission to determine petitioner's claim on the merits, despite the nonreviewability provisions of the governing statute?

2. Since petitioner's claim is based upon an attachment-judgment lien, adjudicated under the laws of New York against the New York funds of a Russian corporation, now part of the Soviet Claims Fund, and since petitioner has been at all times the full beneficial owner of said lien, and holder of the full legal title as well prior to the Litvinov Assignment: — is not such denial of petitioner's claim, with resultant deprivation of petitioner's vested property rights, a violation of petitioner's constitutional right to just compensation under the Fifth Amendment, requiring corrective judicial intervention?

3. Did Congress intend that the nonreviewability provision of the governing statute, should confer upon the Commission exclusive power to determine, for itself, the extent of the jurisdiction conferred upon it by the statute, and the power to deny constitutional rights; and if Congress did so intend, does not the nonreviewability provision violate the Fifth Amendment and the judiciary clause, Art. III, Section 2, of the United States Constitution?

Statutes and Executive Agreement Involved

There are printed in Appendix C to this petition: (1) The pertinent provisions of the International Claims Settlement Act of 1949, as amended in 1955, to provide for attachment-judgment lien claims of United States nationals against funds of Russian nationals, and for claims of United States nationals against the Soviet Union; (2) Section 10 of the Administrative Procedure Act; (3) the Litvinov Assignment of November 16, 1933; and (4) New York Civil Practice Act (1932), § 210.

Statement

Soviet Nationalization Decrees—1917

Prior to the Soviet Revolution of November 1917, many Russian banks and other Russian businesses had funds on deposit with banks in the United States. Or nationals of the United States owed these Russian nationals sums of money (R. 3, par. 6).

In 1917, the Soviet Government nationalized these Russian banks and other Russian businesses. In effect, it confiscated and appropriated to itself, all their assets, claiming among other things: that all bank deposits of Russian nationals in the United States, and all other claims by Russian nationals against United States nationals became the property of the Soviet Government (R. 3, par. 7).

City Bank and Russo-Asiatic Bank—mutual correspondents

In 1917 and prior to these Soviet nationalization decrees City Bank had two branches in Russia—one at Petrograd and one at Moscow. Under the Soviet policy of nationalization these two branches were seized by the Soviet authorities and all their assets, books and records were confiscated, and have never been returned (R. 92).

Prior to the Soviet Revolution the Russo-Asiatic Bank and the City Bank, had, for many years, been mutual correspondent banks. Russo-Asiatic Bank had maintained, in New York, a dollar balance with City Bank, and City Bank had maintained ruble deposit balances with the Russo-Asiatic Bank, at Petrograd (R. 94). In January 1918 City Bank had on deposit

with Russo-Asiatic Bank, in Petrograd, about 4,479,000 rubles worth $537,515.80 (R. 9).

On January 4, 1918, City Bank, by its representative, demanded that Russo-Asiatic Bank, at Petrograd, pay City Bank's ruble credit balance. But Russo-Asiatic Bank refused, and City Bank has never recovered payment (R. 9).

In 1932, the City Bank decided to reduce to judgment its ruble deposit claim against Russo-Asiatic Bank and to collect it out of any Russo-Asiatic Bank's assets which might be found in New York, including the $232,623.66 balance which that Bank still had on deposit in City Bank[1] (R. 92-96; 85-87).

Decisions against City Bank in ruble deposit cases brought by others, had been rendered in the Courts of the State of New York, but not in the Federal Courts. Therefore, City Bank's attorneys advised that it would be desirable to insure, so far as possible, that City Bank's own ruble deposit claims against Russo-

[1] The Court below points out (App. A.-2): that in 1918 Russo-Asiatic Bank had on deposit with City Bank, in New York, $2,261,981.72 which subsequent withdrawals reduced to $232,623.66 by 1925. The Court then says City Bank "does not clearly indicate why it permitted these withdrawals rather than paying itself out of the funds on deposit." But what disposition was made of deposits in excess of $232,623.66 at City Bank was never in issue in this case, either before the Commission or in the District Court. Petitioner was not required to and did not make any explanation of what happened to those funds. If the issue had been relevant or material and had been raised petitioner would readily have explained, that the excess funds, except for a few thousand dollars, were applied prior to 1925 to payment of other valid claims of City Bank against Russo-Asiatic Bank, or were applied against New York attachments in favor of others.

This case, however, raises only the question of the validity of City Bank's attachment-judgment lien affecting Russo-Asiatic *deposits at Guaranty Trust*, not at City Bank. What did or did not happen to the excess funds at City Bank is no reason for denying City Bank's constitutional rights under its attachment-judgment lien to funds on deposit at *Guaranty Trust*.

Asiatic Bank also be determined in the New York courts, rather than in the Federal Courts (R. 86; 96-97).

Russo-Asiatic Bank was an alien Russian corporation. For that reason, any action brought by City Bank against Russo-Asiatic Bank in New York courts could be removed to the Federal Courts (R. 86). Therefore, City Bank's attorneys advised that an attachment action against Russo-Asiatic Bank should be brought on behalf of and for the benefit of City Bank, but in the name of a resident alien, so that removal of the proposed action to the Federal Courts might properly be avoided[2] (R. 86-87).

City Bank's assignment to Grant as its agent for collection and trustee

Accordingly, on November 26, 1932, City Bank assigned its claim on its ruble deposit balances at Russo-Asiatic Bank, Petrograd, to one Herbert J. Grant. Grant, a resident of New York but a citizen of Great Britain, was an entirely reliable and trustworthy friend of the Bank (R. 9; 77-82; 88-90). City Bank made the assignment to Grant, under an oral agreement, as assignee for collection only and as trustee for the Bank. It was made for the sole purpose of having

[2] The Court of Appeals in its opinion (App. A-3) asserts that the assignment of this claim by City Bank to Grant "must have been intended to be absolute" since the constitutional and statutory provision conferring diversity jurisdiction on the Federal Courts "cannot be frustrated by the interposition of a nominal party for the sole purpose of placing jurisdiction in a court of the real owners preference."

But the Court of Appeals overlooks the pertinent authorities. While federal diversity jurisdiction cannot be *conferred* by assigning a claim for collection, *removal jurisdiction* can be *avoided* by such assignment. (See "Dobie on Federal Procedure", § 102, pp. 409-410, and Supreme Court cases cited, by Professor Armistead M. Dobie, later Judge Dobie of the Court of Appeals, Fourth Circuit.)

Grant bring an attachment action on the Bank's ruble deposit claims on behalf of, and for, and in favor of, the City Bank (R. 9-10). These facts plaintiff established beyond all question—by proof before the Commission—now in the record before this Court. The Commision made no contrary finding (R. 77-82; 88-90; 84-87; 95-98).

Grant took the assignment on the express oral understanding and agreement that he would act only as the Bank's assignee for collection and as its trustee. He gave nothing of value. And he obligated himself to pay all amounts collected to the Bank and to assign to the Bank any judgment recovered, which he did (R. 9-10; 89; 78-82). Thus—City Bank was at all times the full beneficial owner of the claim. And Grant was only its assignee for collection and the Bank's trustee—with a naked legal title.

Grant obtains an attachment-judgment lien in favor of City Bank

On November 28, 1932, Grant brought an attachment action against Russo-Asiatic Bank in the Supreme Court of the State of New York, on the assigned claims, to recover the dollar value of the 4,479,000 rubles with interest (R. 10, par. (j); 9 par. (c); 11 par. (m)). On November 29 the Supreme Court isued a warrant of attachment against the property of the Russo-Asiatic Bank situated in New York (R. 10, par. (j)). On November 30, the Sheriff levied the warrant of attachment on funds of Russo-Asiatic Bank on deposit with City Bank (R. 10-11). City Bank made a return to the levy showing a credit balance at City Bank in favor of Russo-Asiatic Bank.

On March 13, 1933, four months later, the warrant of attachment was levied on funds of the Russo-Asiatic Bank on deposit with Guaranty Trust Company of New York. But Guaranty made a return stating that it held no funds of Russo-Asiatic Bank. It claimed that the Russo-Asiatic Bank's credit balance had been exhausted by a setoff of Guaranty's own claims (R. 11, 12, par. (s)).

In December 1944, 11 years later, however, it was held in litigation brought by the United States in New York under the Litvinov Assignment, to recover the Russo-Asiatic Bank deposit with Guaranty: that there was, in fact, a free credit balance of Russo-Asiatic Bank, at Guaranty, in the amount of $3,364,000. This balance was collected by the United States, pursuant to the Litvinov Assignment soon to be mentioned, and is now included in the Soviet Claims Fund. Therefore, on March 13, 1933, Guaranty did have a credit balance in favor of Russo-Asiatic Bank which in fact had been caught by the Grant attachment. And that sum is now part of the Soviet Claims Fund—still subject to the lien of the Grant attachment (R. 11, par. (l); 12-13, par. (s)).

Under the applicable substantive law of New York the levy of the warrant of attachment created a vested lien upon the funds of Russo-Asiatic Bank held by Guaranty Trust Company (R. 11, par. (l)). On April 1, 1933, the Supreme Court of the State of New York entered judgment in the attachment action against Russo-Asiatic Bank for $1,031,000 (R. 11).

On April 7, 1933, City Bank paid to Grant's attorney the $232,000 credit balance in the attached dollar account of Russo-Asiatic Bank at City Bank. After

deduction of Sheriff's poundage and of the fee of his attorney, Grant remitted the entire balance of $227,000 to City Bank. For Grant indisputably never had any beneficial title or claim to the proceeds. His function was solely that of agent for collection acting as trustee on behalf of and in favor of the Bank. He had only a bare legal title (R. 11, 12, par. (r)).

The Litvinov Assignment

Moreover, on August 23, 1933, almost three months before the Litvinov Assignment, Grant reassigned to the City Bank all his right, title and interest to the ruble deposit accounts at Petrograd, the attachment lien and judgment. Thus, prior to the Litvinov Assignment the Bank held full legal, as well as full beneficial title to the attachment, the judgment and the attachment-judgment lien on the funds of Russo-Asiatic Bank on deposit with Guaranty (R. 11-12).

On November 16, 1933, the President of the United States recognized the Soviet Government. And there was executed, on that day, by the Soviet in connection with this recognition, the Litvinov Assignment. In that assignment the Soviet Government declared that the assignment was preparatory to a final settlement of claims; and among other things it released and assigned to the United States, all amounts admitted to be due or that may be found to be due, in the United States to the Soviet Government (R. 4, par. 8; 4-5, par. 10; (App. C-9-10).

Like City Bank, various nationals of the United States, prior to the Litvinov Assignment, had obtained in courts of the United States: attachment-judgment liens against property in the United States of various

Russian corporations. These attachment-judgment liens had created vested property rights in the United States nationals and vested lien rights in the Russian property (R. 5, par. 11).

Between November 16, 1933 and 1955, when the Soviet Claims Act was enacted, the United States collected, under the Litvinov Assignment: funds admitted to be due or which were found to be due from United States nationals to the Soviet Government or to Soviet nationals. And included in these collections by the United States were funds of the Russo-Asiatic Bank on deposit with Guaranty Trust Company of New York —the $3,364,000 which had been collected by the United States, as previously mentioned. For under the Soviet nationalization decrees, the Soviet had succeeded to Bank deposits of Russo-Asiatic Bank in the United States (R. 5-6, par. 12).

Soviet Claims Act—1955

However, although the Litvinov Assignment was made preparatory to a final settlement, the Soviet Government never actually settled any outstanding claims (R. 6, par. 13). Therefore, in 1955, Congress amended the International Claims Settlement Act of 1949 to establish a Soviet Claims Fund (App. C-2-6). This consisted of all Russian funds collected in the United States by the United States under the Litvinov Assignment for use in payment of claims of United States nationals (R. 6, par. 14; App. C-4 § 302).

Accordingly, the 1955 amendment conferred upon the Commission jurisdiction to determine claims of United States nationals against the Soviet Government and also attachment-judgment lien claims against

funds of Russian nationals (R. 6-7). Regarding attachment-judgment lien claims, Section 305(a)(1) provides (R. 7-8; App. C-4) that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity of—

1. claims of nationals of the United States against Russian nationals;
2. originally accruing "*in favor of*" a national of the United States;
3. with respect to which a judgment was entered in, or a *warrant of attachment* issued from, any court . . . of a State of the United States;
4. "*in favor of*" a national of the United States;
5. with which judgment or warrant of attachment a lien was obtained by a national of the United States *prior to November 16, 1933;*
6. Upon any *property* in the United States which has been *collected* . . . by the Government of the United States *pursuant* to the Litvinov Assignment.

And provision is made in the Act for the payment of such lien claims in full, to the extent of the property attached. (App. C-4-5, § 305(a)(1) and § 310(a)(1))

The clear purpose and intent of Congress in Section 305(a)(1) was to preserve, *unimpaired*, vested attachment-judgment lien rights beneficially owned by United States national against Russian funds in the United States—collected by the United States under the Litvinov Assignment. This was to prevent an unconstitutional taking of vested property rights without due process and without just compensation (R. 7-8).

Under the established facts here, and under the applicable substantive law of New York, the City Bank, a United States national, was at all times the beneficial owner of the claim assigned to Grant, of the attachment-judgment lien, and of the claim presented to the Commission.[3] Also, on August 16, 1933, three months prior to the Litvinov Assignment, City Bank owned, by reassignment from Grant, the bare legal title, as well as the full beneficial title to all of these property rights (R. 11-12).

The Foreign Claims Commission's Decision

On March 30, 1956, City Bank filed its claim for $829,633.85 based upon its attachment-judgment lien against funds of Russo-Asiatic Bank (R. 9). On August 16, 1956, the Commission issued its Proposed Decision (R. 33-37) under which it proposed to deny petitioner's claim upon the ground that Grant was a British subject and that it was "upon application by Grant pursuant to the unconditional assignment by claimant to Grant that the warrant of attachment was issued in 1932." And that consequently the warrant was not issued "on application of a national of the United States" (R. 13).

Thereafter, a hearing was had before the Commission (R. 44-76). At the hearing, City Bank expressly offered to produce Herbert J. Grant, now retired and living in England, in person, for examination, under oath by the Commission (R. 117; 45; 75-76). But

[3] That the oral trust was enforceable and proper under the "applicable substantive law" of New York is fully established. See 1 *Scott on Trusts*, Sec. 52, pp. 354-55; *Ralph* v. *Cronk*, 260 N. Y. 428 (1934); *Blanco* v. *Valez*, 295 N. Y. 224 (1946); *Hirsh* v. *Auer*, 146 N. Y. 13 (1895); and *Margareten* v. *Margareten*, 76 N. Y. S. 2d 854 (1947).

significantly the Commission ruled that since it had the affidavit of Grant on file, it would only require his personal presence, if there were any facts which the Commission doubted, but would not require his presence if the Commission accepted his affidavit as true (R. 76). It never suggested or required at any time, that Grant appear for examination or that his deposition be taken (R. 14; par. 23). By its conduct the Commission affirmatively indicated that it had no doubt of the existence of the oral trust in Grant. And in its Final Decision, it flatly admitted that City Bank had "made an offer to produce Grant, now living in Britain as a witness" (R. 117).

Unquestionably, the oral trust agreement for the benefit of City Bank, was fully established by the evidence as the Commission's conduct at the hearing clearly indicated, and, as we have shown (*supra* p. 12), it was lawful and enforceable in all respects. There is no basis whatsoever for any implication, by the Court below, that the assignment to Grant was either absolute or unconditional (See fn. 2, *supra* p. 6). In this connection we also invite attention to the pertinent evidence: the affidavits of Herbert J. Grant (R. 77-82); of Rowland R. Hughes (R. 88-90); of George F. Nolte (R. 91-98); and of MacIlburne Van Voorhies (R. 83-87).

Thereafter, the Commission rendered its Final Decision denying petitioner's claim (R. 115-119). It did not find that City Bank had failed to establish, that at all times, it held full beneficial title to the claim, the attachment, the judgment and the lien created thereby. Nor did it deny that petitioner had full legal title as well, to these property rights on August 23, 1933, prior to the Litvinov Assignment. What it did

was to hold flatly that "other propositions are determinative" of petitioner's claim, that is, propositions of law (R. 15-16; 117-118; 118-119).

Although the Commission's Final Decision reworded its Proposed Decision, it is inescapably clear that the Commission denied petitioner's claim upon the grounds set forth in its Proposed Decision, namely, that since Grant was a British subject and the warrant of attachment was issued "upon application by Grant" it was not issued "upon application of a national of the United States . . ." (R. 16, par. 27; 118-119), and, therefore, did not fall within the *class of claims* over which Congress gave the Commission jurisdiction under § 305(a)(1) of the Act.

The Action in the District Court

Thereafter, City Bank brought the present action in the District Court for a declaratory judgment requiring the Commission to exercise its jurisdiction, and moved for summary judgment. Defendants made a cross motion to dismiss and in the alternative for a summary judgment (R. 120-121; 123). The District Court granted defendants' motion to dismiss for lack of jurisdiction, but did not determine either of the motions for summary judgment (R. 155).

The entire record before the Commission was submitted to the District Court. But defendants filed no affidavits, either in opposition to petitioner's motion for summary judgment, or in support of their own cross motion, except a short affidavit of the Treasury Department setting forth some purely explanatory clerical facts (R. 159-160).

The only question involved, said the District Court, was whether Section 305(a)(1) excluded claims bene-

ficially owned. The Court then pointed out that the Commission had reached the conclusion on this determinative proposition: "that irrespective of who was the beneficial owner, since of record" the claim had been "owned by a foreign national" it did not "come within the Act" (R. 152-3). It granted the motion to dismiss for lack of jurisdiction, holding the Commission's decision not subject to review by the Courts (R. 155).

The Decision of the Court of Appeals—specifications of error.

The Court of Appeals erred:

1. In holding that the nonreviewability provision of the governing statute prevents any corrective judicial intervention, even though, as petitioner contends, violations of constitutional rights are clearly involved.

2. In failing to hold that the ruling of the Commission excluding the class of claims beneficially owned was an erroneous limitation of the jurisdiction conferred upon the Commission by Congress, which resulted in the exclusion of the claim of petitioner from a hearing on the merits in violation of due process.

3. In holding that there was "no property relation whatsoever" between City Bank's lien claim and "any money in the Treasury" (App. A-8), despite the fact that in Section 305(a)(1) Congress has expressly preserved property rights vested pursuant to attachment-judgment liens to prevent an unconstitutional taking of property.[4]

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[4] However, such property relation does exist. At the hearings before the Senate Committee on Foreign Relations on the proposed Amendment to the Act (H. R. 6382, 84th Congress, 1st Session, 1955) Commissioner Clay, with respect to lien claims stated (p. 61):

". . . United States nationals . . . obtained judgment or attachment liens against . . . property then in the United

4. In holding that City Bank had "let the statute of limitations run against its claim" (App. A-7), when Congress in Section 305(a)(1) has expressly declared that no attachment-judgment lien claim could be valid unless owned prior to November 16, 1933, that is, unless at least 22 years old, and had thereby waived any contention that such claims were barred by any statute of limitations or by laches.

5. In undertaking to review the case as if it had been heard on the merits by the Commission and decided on motion for summary judgment by the District Court.

Reasons for Granting the Writ

I

The Commission erroneously limited its own jurisdiction in violation of due process. It misconstrued Section 305(a)(1) as excluding the *class of claims* beneficially owned by United States nationals and then denied petitioner's claim consideration on the merits, as one in that excluded class. The Commission's ruling eliminated *jurisdiction* over the only class of claims which Congress, in Section 305(a)(1), authorized it to "receive and determine"—the only class which Congress really intended to protect.

Failure to function within its congressionally delegated powers reduced the Commission, in effect, to a

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States in the name of Russian corporations which had theretofore been nationalized . . . Since, under the terms of the Litvinov Assignment, the property . . . encumbered by these liens, passed to the United States, the bill provides . . . for their payment from the proceeds of the liquidation of those properties.

". . . In other words, the lien formerly existing against particular property would be deemed to attach to the proceeds . . . of that property now in the Treasury as part of the $9,100,000 fund."

mere group of individuals, acting without authority, without legal warrant and in violation of due process. This error was not mere error incidental to the consideration of petitioner's claim on the merits—such as error in the admission of evidence, or in a subsidiary legal ruling or even in the result reached. It was the all-inclusive error of failing to keep within statutory authority.

Congress clearly intended to protect *beneficial* owners of attachment-judgment liens. Legal ownership or ownership of record, is obviously never enough. Beneficial ownership is always the ultimate test—the only true ownership. Therefore, Congress described the class of claims it intended to protect as those originally accruing "in favor of" a national of the United States and the judgments and warrants of attachment on which they are based as those issued "in favor of" a national of the United States.

Under international law the nationality of a claim is always determined by the nationality of its beneficial owner, and not by mere legal title or ownership of record. See G. H. Hackworth, former legal adviser of the Department of State, in his authoritative "Digest of International Law," (First Ed. 1943) Vol. V, pp. 802-851; at pages 804; 805-809; 813; 831.

Moreover, the Commission itself recognized beneficial ownership as the only true test in disposing of claims against the Yugoslav Claims Fund. Commissioner Clay explains persuasively that in passing on claims under the Yugoslav Claims Agreement the Commission consistently recognized the beneficial owner, and not the holder of naked legal title, as the true owner

of the claim asserted. See his article in the Georgetown Law Journal, issue of June, 1955, entitled: "Aspects of Settling Claims under the Yugoslav Claims Agreement of 1948", 43 Georgetown L. J. 582-614; at pages 597; 610-611 (1955).

Yet the Commission's erroneous limitation of its own jurisdiction in the *present case* to claims legally owned of record by United States nationals, would now place a highly technical and unrealistic construction upon the Act, contrary to its spirit, to the sound intendment of Congress and to the principles which the Commission itself has consistently applied in other cases.

II

Clearly the Court below has decided the Federal questions here involved in a way in conflict with the applicable decisions of this Court. And the courts have the power and the duty to keep the determinations of the Commission within the statutory authority conferred upon it by Congress.

Thus, in a recent case cited by petitioner, but not referred to in the opinion below, *Harmon* v. *Brucker*, 355 U. S. 579 (1958), the Supreme Court forceably reaffirmed the power of the courts to intervene to require administrative officials to act within their statutory authority. And this it did despite the fact that the governing statute expressly prescribed that the administrative findings involved "were final subject only to review by the Secretary of the Army." To the same effect are: *Marshall* v. *Brucker*, 356 U. S. 24 (1958); *Service* v. *Dulles*, 354 U. S. 363 (1957) following *Accardi* v. *Shaughnessy*, 347 U. S. 260 (1953); *Brannan* v. *Stark*, 87 U. S. App. D. C. 388, 185 F. 2d

871, 875 (1950), aff'd 342 U. S. 451; *Order of Railway Conductors* v. *Swan*, 329 U. S. 520 (1947); *Social Security Board* v. *Nierotko*, 327 U. S. 358, 369 (1946); *Stark* v. *Wickard*, 321 U. S. 288, 310 (1944); *Crowell* v. *Benson*, 285 U. S. 22, 89 (1932).

Moreover, contrary to the holding of the Court of Appeals below, it is clear that the courts may intervene with respect to administrative decisions, on jurisdictional or constitutional grounds even though the statute provides that such decisions "shall be final and conclusive" and that "no other official or any court of the United States shall have power or jurisdiction to review any such decisions." *Dismuke* v. *United States*, 297 U. S. 167 (1936); *Hospodor* v. *United States*, 209 F. 2d 427, 429 (3rd Cir. 1953); *U. S. Electrical Motors* v. *Jones*, 80 U. S. App. D. C. 329, 153 F. 2d 134 (1936) and *Siegel* v. *United States*, 87 F. S. 555 (E. D. N. Y., 1949).

III

Further, when the Commission improperly misconstrued its jurisdiction and rejected petitioner's claim, it not only denied petitioner due process, but deprived it of its vested property interest in its attachment-judgment lien, without just compensation, contrary to the intent of Congress specifically expressed in Section 305(a)(1) of the Act. The Senate Report, U. S. Code, Congressional and Administrative News (1955), Vol. 2, p. 2750, states with respect to such lien claims:

> ". . . A number of nationals of the United States, having pursued their claims against Russion nationals in United States courts, or in State courts, *obtained liens against specific assets, and to that extent acquired a property interest therein.*

> These assets then became the subject of the Litvinov Assignment and were transferred to the Federal Government. Lien-claimants, it was felt, were entitled to a priority in the payment of their claims over other claims against the Soviet Government which had not attained a *comparable legal status.*" (Emphasis added)

The duty of judicial intervention to prevent invasion of constitutional rights, such as the denial of due process or the taking of petitioner's property without paying for it, is undeniable. As the Court below has held repeatedly with respect to the very nonreviewability clause here involved, courts can, nevertheless, "intervene where constitutional rights have been violated" (App. A-7). Congress itself cannot prevent the vindication of such rights in a judicial tribunal by nonreviewability provisions, or otherwise.

Petitioner here seeks, in effect, a return of its own property which the United States now holds in trust as part of the Soviet Claims Fund. It is not seeking, as a matter of discretion or grace, the allowance of an award out of an international fund, similar to the Yugoslav Claims Fund, provided by the Soviet in a settlement with the United States.

Moreover, if Congress intended to confer upon the Commission exclusive power to determine for itself the extent of its own jurisdiction, and the absolute power to deny constitutional rights, this Court should declare the nonreviewability provision, itself, unconstitutional. *Estep* v. *United States,* 327 U. S. 114, 126-131, 132 (1946). Congress cannot deprive the courts of the power to determine questions of constitutional right. (Const. Art. III, Section 2.) As stated by

Chief Justice Hughes in *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38 (1936), at page 52:

> "Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

And in *Peters* v. *Hobby*, 349 U. S. 331 (1955) the Supreme Court more recently said (p. 345):

> "Agencies, whether created by statute or Executive Order, must of course be free to give reasonable scope to the terms conferring their authority. *But they are not free to ignore plain limitations on that authority.*" (Emphasis added)

IV

The suggestion of the Court of Appeals that the statute of limitations is now a bar to petitioner's claim is without merit (App. A-7). An action against Guaranty Trust Company in aid of the Grant attachment, was, in fact, commenced to prevent the running of the statute, but it was stipulated that Guaranty's time to answer would be extended until 10 days after demand for service of an answer (R. 72-73). For that action in aid of the attachment raised precisely the same issue as the action then pending, brought by the United States against Guaranty, to collect Russo-Asiatic deposits under the Litvinov Assignment. That issue was: whether there were any free funds in the Russo-Asiatic Bank's account, over and above setoffs claimed by Guaranty Trust. This issue was vigorously litigated by the United States on behalf of all United

States nationals, including petitioner, having claims against Soviet funds. (infra p. 22)* Patently there was no need or justification for a separate litigation by City Bank, for if the setoff claimed by Guaranty was valid, City Bank had no attachment lien.

Moreover, under Section 305(a)(1) Congress specifically provided for the payment of attachment-judgment liens against funds of Russian nationals, but only if such liens became effective "prior to November 16, 1933", some 22 years before the enactment of the statute in 1955. It expressly recognized liability to apply these funds in payment of such liens and thereby waived any claim that such liens are barred by any statute of limitations or by laches. Only attachment-judgment liens at least 22 years old can have any standing, and these Congress expressly *preserved* by the statute.

Significantly, the Commission did not hold the statute of limitations or laches a bar in its decision allowing the *Friede* attachment claim (R. 106, par. 15). As to the statute of limitations, laches, and failure to sue the United States, that allowed claim was situated exactly as is the attachment-judgment claim asserted by petitioner. And the Commission there saw no merit in the contention which the Court of Appeals now suggests.

V

Without merit, also, is the suggestion of the Court of Appeals that if petitioner thought "its lien could follow the funds into the Treasury of the United States

it did not follow up that thought by suing the United States" (App. A-7). But the United States was not engaged in a "wrongful taking" when it recovered the Russo-Asiatic deposits from the Guaranty Trust Company under the Litvinov Assignment. Rather, it was engaged in the performance of a beneficent public function on behalf of United States nationals, including petitioner. As was well known, the United States was collecting these funds with the publicly avowed intent, later expressly confirmed and declared in Section 305(a)(1) and (2) to pay out the funds to petitioner and other rightful claimants. *United States* v. *Pink*, 315 U. S. 203, 225, 228, 230, 232 (1941); *United States* v. *National City Bank*, 90 F.S. 448, 455 (1950); see also in this connection, Hearings on H. R. 6382, Senate Committee on Foreign Relations, 84th Congress, 1st Session, staff memorandum, IV Russia, p. 41; also House Joint Resolution 315, August 4, 1939, 53 Stat. 1199, and statement of Rep. Multer, Senate Hearings, *ibid.* p. 51.

Petitioner had every reason to expect that the United States would recognize and protect its adjudicated attachment-judgment lien as required under the Constitution and the Litvinov Assignment, and that expectation was fully justified as the provisions of Section 305(a)(1) clearly demonstrate. Obviously, there was and is no basis yet for any action by petitioner to recover against the United States in the Court of Claims.

Further, Congress clearly intended that petitioner's attachment-judgment lien for $829,633.85 be paid out

of the funds of Russo-Asiatic Bank, a Russian corporation, and not by United States taxpayers.

Because the Court below has decided the Federal questions here involved in a way in conflict with the applicable decisions of this Court (*supra*, pp. 18-21), we submit that judicial intervention is proper and imperative despite the nonreviewability provision of the governing statute.

Always on jurisdictional and constitutional questions and on matters of statutory interpretation judicial tribunals have been regarded as the specialists. The limited review here sought would involve only the exercise of those special judicial talents. Such review would strengthen rather than weaken the efficiency and the justice of the administrative process, and would tend to preserve public confidence in administrative action. This case is, therefore, of general public importance.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

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W. V. T. JUSTIS
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August 15, 1958.

APPENDICES

APPENDIX A

OPINION BELOW

APPENDIX B

JUDGMENT BELOW

APPENDIX C

STATUTES AND EXECUTIVE AGREEMENT INVOLVED

APPENDIX A

Opinion Below

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14248

THE FIRST NATIONAL CITY BANK OF NEW YORK, APPELLANT

v.

WHITNEY GILLILLAND, ET AL, APPELLEES

Appeal from the United States District Court
for the District of Columbia

Decided June 12, 1958

Mr. John A. Wilson, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of court, with whom *Messrs. F. Gloyd Awalt* and *W. V. T. Justis* were on the brief, for appellant.

Mr. B. Jenkins Middleton, Attorney, Department of Justice, with whom *Assistant Attorney General Doub, Messrs. Oliver Gasch,* United States Attorney, and *Samuel D. Slade,* Attorney, Department of Justice were on the brief, for appellees. *Messrs. Morton Hollander,* Attorney, Department of Justice, and *Harold D. Rhynedance, Jr.,* Assistant United States Attorney, also entered appearances for appellees.

Before EDGERTON, Chief Judge, and BAZELON, Circuit Judge, and MADDEN, Judge, United States Court of Claims.*

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* Sitting by designation pursuant to provisions of Sec. 291(a), Title 28, U.S. Code.

MADDEN, *Judge*: This is an appeal from a judgment of the District Court dismissing the appellant's action for want of jurisdiction. The basis for the order of the District Court was that an applicable statute expressly denied resort to the courts.

Before the Russian revolution of 1917, the appellant bank had ruble deposits in the Russo-Asiatic Bank, one of the largest banks in Russia. Russo-Asiatic had dollar deposits in appellant bank and other banks in New York City, particularly the Guaranty Trust Company. The new Soviet Government, when it seized power, nationalized the banks in Russia, and repudiated the obligation of those banks to pay their depositors. Russo-Asiatic, however, continued to do business through its branches in England, France, and China.

Appellant says that in January 1918 it had on deposit in Russo-Asiatic in Petrograd rubles worth $537,515.80; that it demanded payment and payment was refused. At that time Russo-Asiatic had on deposit with appellant in New York $2,261,981.72. Subsequent withdrawals reduced this amount to $232,623.66 by 1925. The appellant does not clearly indicate why it permitted these withdrawals rather than paying itself out of the funds on deposit.

In 1932 the appellant decided to reduce to judgment its claim against Russo-Asiatic and collect it out of Russo-Asiatic's assets which might be found in New York, including the $232,623.66 which Russo-Asiatic still had in appellant's own bank. Decisions in the State courts of New York, particularly the decision of the Court of Appeals in *Sokoloff* v. *National City Bank*, 239 N.Y. 158, 250 N.Y. 23, established the doctrine in those courts that the Soviet nationalization of the banks was not a defense to a suit brought elsewhere against a bank on account of the refusal of its branch in Russia to pay its depositors. The appellant desired, therefore, to have its suit litigated in the State courts of New York. If it had, itself, sued in a New York court, Russo-Asiatic, a non-citizen of New York, could have removed the case to the Federal courts. The appellant, therefore, assigned its claim to one Grant.

a resident of New York but a national of Great Britain. A suit by Grant against Russo-Asiatic could not be removed to the Federal courts, since both were non-citizens.

The assignment to Grant was, as written, absolute. If it was to serve the purpose for which it was made, it must have been intended to be absolute, since the Constitutional provision that the jurisdiction of the Federal courts shall extend to controversies between citizens of a state and citizens of a foreign state, and the statutes implementing that Constitutional provision cannot be frustrated by the interposition of a nominal party for the sole purpose of placing jurisdiction in a court of the real owner's preference.

In Grant's suit against Russo-Asiatic substituted service by publication was used, and there was attachment of Russo-Asiatic's deposits in appellant's bank and in Guaranty Trust Company's bank. Guaranty Trust Company made a return to the service of the attachment upon it stating that it had no funds of Russo-Asiatic in its bank. Appellant made a return stating that it had $232,623.66 belonging to Russo-Asiatic. On April 1, 1933, Grant took a default judgment for $537,515.80 plus interest and costs, the total judgment being $1,031,757.25, against Russo-Asiatic. Appellant paid its $232,623.66 to Grant, who, after deducting attorney's fees and expenses, paid over the balance, $227,505.53 to appellant. That amount was credited as a partial satisfaction of Grant's judgment. On August 23, 1933, Grant assigned all his rights in appellant's claim against Russo-Asiatic to appellant.

Guaranty Trust's return in Grant's attachment suit stating that it owed Russo-Asiatic nothing was proved inaccurate by the decision in 1947 in *Steingut* v. *Guaranty Trust Co.*, 58 F. Supp. 623, S.D. N.Y., affirmed 161 F. 2d 571, *certiorari* dismissed on motion of petitioner's counsel, 332 U.S. 753. We shall refer hereinafter to that litigation.

On November 16, 1933, the President of the United States recognized the Soviet Government of Russia, and in connection with this recognition the Litvinov Assign-

ment was executed. By that instrument, the Soviet Government assigned to the United States all claims which the Soviet Government owned in the United States. Since the Soviet Government had nationalized the Russian banks, it owned the deposits which those banks had in banks in the United States, one of which was Russo-Asiatic's deposit of $3,364,000 in Guaranty Trust in New York. In the *Steingut* case, cited above, in which the suit was brought under the Litvinov Assignment, it was held that Guaranty Trust was not entitled to set off the amount which it had lost because of the refusal of Russo-Asiatic to pay it its ruble deposits in Russo-Asiatic's Petrograd branch. The United States recovered a judgment of $3,364,939.69 in *Steingut*, all of which was paid into the Treasury in 1947 and 1948. In the *Steingut* litigation a number of persons who had levied attachments on Russo-Asiatic's deposits in Guaranty Trust intervened to protect their attachment liens. The appellant did not intervene. It says that it did not do so because the United States in that litigation was testing the question whether Guaranty Trust owed Russo-Asiatic anything, and appellant's intervention would have been for the same purpose, and hence useless. This is a remarkable explanation of appellant's indifference to the *Steingut* suit. The purpose of that suit was not merely to test a legal question, but to collect the money, if any, which Guaranty Trust owed Russo-Asiatic, and put it into the Treasury of the United States. But that was the same money which appellant now says it owns, and has owned ever since its 1932 attachment was levied. It says that it stood by and allowed the Government to carry off its money because it anticipated that the Government would use the money to reimburse its nationals who suffered losses due to Soviet nationalization.

The United States during some eighteen years of investigation and litigation was able to collect some $9,000,000 as a result of the Litvinov Assignment. In 1955 Congress provided by statute for the distribution of this fund. By the Foreign Claims Settlement Commission Act of 1955, 69 Stat. 562, section 302, 22 U.S.C. Supp. IV.

1641a, Congress appropriated this money into a Soviet Claims Fund. It gave to the Foreign Claims Settlement Commission, a tribunal which had been set up in 1949 to administer a Yugoslav fund, the task of receiving and determining the validity of claims against the Soviet Fund. Two kinds of claims were to be considered. The first was claims against the Soviet Government arising prior to November 16, 1933, and the second was certain claims against Russian nationals whose property had been collected by the United States pursuant to the Litvinov Assignment. Claims of the latter type were given priority of payment if they met the conditions laid down in section 305 (a)(1) of the statute, 22 U.S.C. Supp. IV, 1641d (a) (1). The conditions were that such a claim had to be a claim of a national of the United States against a national of Russia; there must have been a judgment or an attachment, founded on the claim, issued out of a court of the United States in favor of a national of the United States; and a lien must have, pursuant to the judgment or attachment, been obtained prior to the date of the Litvinov Assignment, upon property collected by the United States after and pursuant to the Assignment.

Section 314 of the statute provided:

> Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action. (22 U.S.C. Supp. IV, 1641m).

The appellant filed a claim with the Foreign Claims Settlement Commission for the $799,133.59, the part of the Grant judgment hereinbefore described which remained unsatisfied, asserting that this claim satisfied the conditions above recited for allowance as a preferred claim. The Commission issued a "Proposed Decision" denying

the claim and stating reasons therefor. The appellant appeared before the Commission and argued at length and was interrogated by the Commission. In its final decision the Commission adhered to its denial of the claim. In the decision it indicated its doubt as to the existence of the alleged oral trust in Grant for the benefit of the plaintiff, but then said "However, in our judgment, other propositions are determinative of this matter." It then pointed out that the warrant of attachment was not issued "in favor of" a national of the United States, and a lien was not obtained by a national of the United States pursuant to the attachment and judgment.

The appellant says that since it was the beneficial owner of the claim held by Grant, the attachment and the lien were in its "favor" and the statute was satisfied. The Commission did not find that the plaintiff was the beneficial owner, but it apparently intended to hold that even if appellant was the beneficial owner, still, because the attachment and judgment and lien were obtained by Grant, the conditions of section 305 (a)(1) were not satisfied.

If the Commission did so hold, it may have been a error of law, an unjustified elevation of form over substance. But section 314 makes the actions of the Commission "final and conclusive on all questions of law and fact. * * *." The appellant says that what it asserts to have been an error of law was more than that, that it was a redefinition of the Commission's jurisdiction by excluding from the benefits of the statute a class of persons meant to be covered by the statute, i.e., beneficiaries of naked trusts. The appellant relies upon certain decisions of the Supreme Court to the effect that an administrative body may not determine the limits of its grant of authority. *Social Security Board* v. *Nierotko*, 327 U. S. 358; *Stark* v. *Wickard*, 321 U. S. 288; *Crowell* v. *Benson*, 285 U. S. 22. In none of those cases was there an express statutory provision that the actions of the administrative body should be unreviewable. There is no constitutional problem with regard to this point in the appellant's argu-

ment. Congress could have expressly disqualified beneficiaries of oral trusts from the benefits of the statute, hence, if it's delegate with unreviewable power denies those benefits to such persons, it has not violated the Constitution. *de Vegvar* v. *Gilliland*, 91 U. S. App. D. C. 126, 228 F. 2d 640, *cert.* denied, 350 U. S. 994; *Haas* v. *Humphrey*, 100 U. S. App. D. C. 401, 246 F. 2d 682, *cert.* denied *sub nom. Haas* v. *Anderson*, 355 U. S. 854; *American & European Agencies, Inc.* v. *Gilliland*, 101 U. S. App. D. C. 104, 247 F. 2d 95, *cert.* denied, 355 U. S. 844.[1]

The appellant says that, by the Grant attachment which became a lien under the law of New York, it acquired a property right in the claim of Russo-Asiatic against Guaranty Trust. It says that the refusal of the Commission to award it, out of the Soviet Claims Fund, an amount equivalent to the unsatisfied part of its judgment, is a taking by the Government of its property without compensation, and is unconstitutional. It will be remembered that the plaintiff caused the Grant attachment to be made in 1932; that Guaranty Trust reported that it held no assets of Russo-Asiatic; that the Litvinov Assignment took place in 1933; that the Government as assignee sued Guaranty Trust in 1947 for what Guaranty Trust had owed Russo-Asiatic ever since 1918, proved that it did owe something, recovered and collected a judgment and put the money in the Treasury. Then, if ever, the appellant's property was taken. At that time the appellant could have urged that what it became the owner of by its attachment in 1932, Litvinov could not assign to the United States in 1933. If the appellant concluded that the part of wisdom was to refrain from asserting its property right in the 1947 litigation, because its lien would follow the funds into the Treasury of the United States, it did not follow up that thought by suing the United States, but let the statute of limitations run against its claim.

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[1] These cases interpreting the nonreviewability clause of the International Claims Settlement Act say courts could intervene where constitutional rights have been violated, but none of the cases involved such a situation.

Between 1947, when the *res*, to which the plaintiff's asserted lien had been attached, disappeared into the Treasury, and 1955 when Congress enacted the scheme for paying Russian claims, there was no property relation whatever between the appellant's claim and any money in the Treasury. When Congress enacted the 1955 statute providing for the payment of Russian claims and granting a preference to claimants whose claims had a certain history, it was not thereby granting a new or reviving an old property interest in any money in the Treasury. It was only passing a law providing that money should be paid to certain persons if they satisfied certain conditions. It could with equal constitutionality have kept the money collected in the Litvinov Assignment in the Treasury, or provided for its distribution according to a wholly different scheme. As the Commission well said, the collection of the Litvinov Assignment money was not its task nor its responsibility. If in its collection, property rights were impaired, relief would have had to be sought elsewhere. The Commission's task was to distribute it according to the statutory scheme, as it understood that scheme.

The action of the Commission was not reviewable in the District Court, and that Court was right in dismissing the appellant's complaint, and its action will be affirmed.

APPENDIX B

Judgment Below

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,248 April Term, 1958.

THE FIRST NATIONAL CITY BANK OF NEW YORK,
Appellant,
v.
WHITNEY GILLILLAND, *et al.*,
Appellees.

C. A. 562-57

United States Court of Appeals
For the
District of Columbia Circuit
Filed Jun 12 1958
JOSEPH W. STEWART
Clerk

APPEAL FROM the United States District Court for the District of Columbia.

Before: EDGERTON, Chief Judge, and BAZELON, Circuit Judge, and MADDEN, Judge, United States Court of Claims.

JUDGMENT

THIS CAUSE came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: June 12, 1958.

Per JUDGE MADDEN.

A true copy,
Test: JOSEPH W. STEWART, Clerk,
United States Court of Appeals
for the District of Columbia Circuit,
By: ELISABETH E. NAMETH, Deputy Clerk.
[SEAL]

APPENDIX C

Statutes and Executive Agreement Involved

"INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949. [Act of March 10, 1950, c. 54, 64 Stat. 12, 22 U. S. C. § 1621, et seq.]

AN ACT

To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'International Claims Settlement Act of 1949' ".

* * * * *

"Sec. 4. * * *

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise."

SOVIET CLAIMS ACT

"PUBLIC LAW 285—84TH CONGRESS

Chapter 645—1st Session

[Act of March 10, 1950, c. 54, 64 Stat. 12, 22 U.S.C. § 1621, et seq. as amended by the Act of August 9, 1955, c. 645, 69 Stat. 572, 22 U.S.C. § 1641, et seq.]

To amend the International Claims Settlement Act of 1949, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Claims Settlement Act of 1949, as amended, is further amended by inserting after the first section thereof the following: 'TITLE I'.

Sec. 2. The word 'Act', wherever it appears in title I in reference to the International Claims Settlement Act of 1949, is amended to read 'title'.

Sec. 3. The International Claims Settlement Act of 1949, as amended, is further amended by adding at the end thereof the following:

'TITLE II'

'VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

[The text of Title II is omitted]

'TITLE III

'CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

'SEC. 301. As used in this title the term—

* * * * * *

'(2) "National of the United States" means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is

organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

* * * * *

'(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constitutent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

'(6) "Litvinov Assignment" means (A) the communication dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

'(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances, or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

'(8) "Commission" means the Foreign Claims Settlement Commission of the United States, estab-

lished pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

'(9) "Property" means any property, right, or interest.

'Sec. 302. * * * The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury.

* * * * *

'Sec. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

'(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment, nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

'(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

'(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

'(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

* * * * *

'SEC. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

'(1) Payment in full of the principal amount of each award made pursuant to section 305 (a) (1) and each award of $1,000 or less made pursuant to section 303 or 304;

* * * * *

'(3) Payment in the amount of $1,000 on account of the principal of each award of more than $1,000 in amount made pursuant to section 303, 304, or 305 (a) (2);

'(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

'(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

• • • • •

'Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.' "

ADMINISTRATIVE PROCEDURE ACT, § 10

[Act of June 11, 1946, c. 324 § 10, 60 Stat. 243, 5 U.S.C. § 1009]

"§ 1009. Judicial review of agency action

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.

Rights of review

(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

Form and venue of proceedings

(b) The form of proceedings for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

Acts reviewable

(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency other-

wise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

Relief pending review

(d) Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

Scope of review

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

LITVINOV ASSIGNMENT OF NOVEMBER 16, 1933

The Litvinov Assignment* was in the form of a letter, dated November 16, 1933, to the President of the United States from Maxim Litvinov, People's Commissar for Foreign Affairs, reading as follows:

"Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to

* See Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Dept. of State, Eastern European Series, No. 1 (1933) for the various documents pertaining to recognition.

property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof:"

This letter was acknowledged by the President on the same date, November 16, 1933. The acknowledgment, after setting forth the terms of the assignment, concluded:

"I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet."

NEW YORK CIVIL PRACTICE ACT (1932) § 210

[§ 210. Action to be brought in name of real party in interest.]

"Every action must be prosecuted in the name of the real party in interest, except that . . . a trustee of an express trust . . . may sue without joining with him the person for whose benefit the action is prosecuted."